

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2526

SPONSOR: Judiciary Committee and Senator Campbell

SUBJECT: Public Records/Putative Father Registry

DATE: April 16, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u> </u>	<u> </u>	<u>CF</u>	<u>Withdrawn</u>
3.	<u> </u>	<u> </u>	<u>HC</u>	<u>Withdrawn</u>
4.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
5.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill makes all information in the Putative Father Registry confidential and exempt from public disclosure. The bill permits access to the registry database by only specified persons or entities, specifically, an adoption entity in connection with the planned adoption of a child; a registrant unmarried biological father may receive a copy of his registry entry; a court, upon issuance of a court order concerning a petitioner acting pro se in an action under the chapter. The bill provides a statement of public necessity.

This bill creates section 63.541 of the Florida Statutes.

II. Present Situation:

The Putative Father Registry, which will be created within the Office of Vital Statistics of the Department of Health, requires an unmarried biological father to register in order to preserve his right to notice and consent to an adoption. The claim of paternity form includes the registrant's name, address, date of birth, and physical description of the mother; the date, place, and location of conception; and the name, date, and place of birth of the minor child or estimated date of birth of the expected minor child, if known.

III. Effect of Proposed Changes:

This bill makes all information in the Putative Father Registry created pursuant to s. 63.063, F.S., confidential and exempt from public disclosure. Pursuant to the new section 63.063, F.S., the registry and the information therein is to be maintained by the Office of Vital Statistics within the Department of Health. There are exceptions to the exemption from public disclosure of such information in connection with an adoption as follows:

- To the adoption entity for purposes of diligent searches.

- To the registrant unmarried biological father for purposes of obtaining a copy of registry entry.
- To the court upon behalf of a pro se litigant.

The bill also provides a statement of public necessity that includes the following state interests:

- Protecting and promoting the well-being of adopted persons and their birth and adoptive parents.
- Ensuring that a child is available for adoption.
- Protecting the confidentiality and precluding the disclosure of personal intimate detail of the registrant and the biological mother and child.
- Preventing unnecessary and unwarranted intrusion into the right of privacy as to personal information.
- Encouraging the collection of information integral to a child's best interest, and
- Providing that the need for due process and protection of privacy outweigh the benefit of public disclosure.

The information in the putative father registry database is to be maintained separate from all other databases and is inaccessible, except as provided, to any other state or federal agency or entity.

The confidentiality and exemption provisions stand repealed October 2, 2008, unless reviewed and enacted by the Legislature. The bill provides an effective date that corresponds with the passage of the substantive bill relating to adoption that enacts the Putative Father Registry.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Public Records¹ Law

Section 24 of article I of the *Florida Constitution* provides the right of access to public records by stating that every person has the right to inspect or copy any public records made or received in connection with official state business. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. Exemptions may be provided by general law. There must be an expressed statement of public necessity which justifies the exemption. The exemption can be no broader than necessary to accomplish the purpose of the law.

¹Public records are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. *See* 119.011(1), F.S.

The corresponding general law is found in chapter 119, F.S. Chapter 119, F.S. provides additional requirements for the establishment of a public records exemption. There must be an identifiable public purpose and it must be no broader than necessary to meet the public purpose it serves. The public purpose must be sufficiently compelling to override the Florida's strong public policy of open government. It must be expressed that the public purpose can not be accomplished without the exemption and that one of three other criterion is satisfied relating to the sensitivity and confidentiality of the information. The custodian of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995 provides for the automatic 5-year review and repeal of an exemption provided under the Public Records Act.² If the Legislature intends to re-enact the new exemption or the substantial amendment of an existing exemption, the Legislature must act to re-enact it in the fifth (and final year) of the exemption period, otherwise, it stands repealed on October 2 of that year.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 24 of the State Constitution requires that when the Legislature provides for a new exemption, the bill enacting it be passed by a two-thirds vote of each house. This bill is subject to that requirement.

Article I, s. 24 of the State Constitution also requires that exemptions to public records requirements be supported by a statement of public necessity and that the exemption be narrowly crafted so that it is no broader than necessary under the stated public necessity. Typically, this narrowing is accomplished by authorizing the exemption of personal identifying information in a record, while permitting access to the remainder of the record.

The bill exempts "all" information contained in the paternity registry from public disclosure. The claim of paternity form, which constitutes the registry database, includes the registrant's name, address, date of birth, and physical description of the mother; the date, place, and location of conception; and the name, date, and place of birth of the minor child or estimated date of birth of the expected minor child, if known. All of this information, however, is "identifying" in nature and, as such, all information in the database would appear to be legitimately protected under the public necessity statement.

² Section 119.15, F.S.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may encourage participation by putative fathers wanting to preserve their right to notice and consent in termination of parental rights and adoption proceedings. This bill may also protect the disclosure of personal identifying and intimate information about the biological mother and the child.

C. Government Sector Impact:

The Department of Health, Office of Vital Statistics will incur whatever expense is attendant with rule-making obligations pursuant to the establishment of the Putative Father Registry and the maintenance of confidentiality and exemption from public disclosure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.³ It has been held that an exemption from disclosure under the Public Records Act does not render the document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure.⁴ Similarly, discovery of criminal investigative records has been granted on the basis that this type of information did not “override the discovery authorized by the Rules of Juvenile Procedure.”⁵ Records which are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records.⁶ It should be noted, however, that in some cases, e.g., medical review committees, the Legislature has provided an express privilege from discovery.⁷

VIII. Amendments:

None.

³ Department of Highway Safety and Motor Vehicles v. Kropff, 445 So.2d 1068 (Fla. 3d DCA 1984).

⁴ Department of Professional Regulation v. Spiva, 478 So.2d 382 (Fla. 1st DCA 1985); in this case the court upheld a hearing officer’s order requiring the state licensing agency to produce exempt grade reports sought by unsuccessful applicant in administrative hearing.

⁵ B.B. v. Department of Children and Family Services, 731 So.2d 30 (Fla. 4th DCA 1999).

⁶ Department of Highway Safety and Motor Vehicles v. Krejci Company Inc., 570 So.2d 1322 (Fla. 2d DCA 1990), review denied, 576 So.2d 286 (Fla. 1991).

⁷ Cruger v. Love, 599 So.2d 111 (Fla. 1992).

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
